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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 27/2018 concerning a minor whose name is known to the Working Group (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 16 January 2018 the Working Group transmitted to the Government of Egypt a communication concerning a minor whose name is known to the Working Group. The Government replied to the communication on 27 March 2018. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. The source reports that at the time of his arrest, the minor was 17 years old and a student attending a secondary school in the city of Mattay in Minya Governorate.

Arrest and detention

5. The source reports that on 14 August 2013, the minor was visiting his aunt's house in Mattay to celebrate his cousin's henna ceremony. Hearing noise, he stepped outside the house to see what was happening.

6. The source specifies that the house is located near the Mattay Police Station, which was attacked on 14 August 2013 by individuals allegedly responsible for the capture and murder of Colonel Mostafa Ragab Al-Atar, deputy sheriff of the Mattay Police Station, and the attempted murder of another police officer, First Lieutenant Kareem Fouad Hendawy. The source adds that this attack took place in the context of the nationwide unrest and violence that transpired following the dispersal of the pro-Morsi sit-in at Rabaa al-Adawiya Square in Cairo.

7. The source indicates that at no stage did the minor participate in any protests or violent acts taking place near his aunt's home on 14 August 2013, nor did he offer any encouragement to those who did.

8. The source alleges that, on 2 February 2014, in the middle of the night, thus nearly six months after the events of 14 August 2013, 25 police officers entered the home of the minor's family in the village of Koum Bassal, Mattay, and arrested the minor. The police officers did not produce any identification or warrant authorizing his arrest, despite appeals from his sister-in-law to do so. The reasons for the minor's arrest were not provided to him until the following day.

9. According to the source, following his arrest, the minor was taken to Mattay Police Station where he was detained until 23 March 2014. During this time, he was hospitalized for five days at Mattay General Hospital for an infection of his lymphatic glands.

10. Reportedly, on 23 March 2014, and without providing an explanation to either the minor or his family, the minor was transferred to the Minya Transfer Prison (Segn al-Tarheelat). The source reports that, while he was there, the minor was subjected to physical and psychological abuse. He was detained in an overcrowded cell, 3 metres square, with 20 to 24 other inmates. The conditions forced the minor to take turns with his cellmates sleeping on the hard concrete floor, leading to severe sleep deprivation and physical and mental distress.

11. Allegedly, on 6 August 2014, during his detention at Minya Transfer Prison, the minor was beaten by prison guards when they discovered a contraband mobile phone in his possession. In the period directly following this assault, the minor was denied adequate medical attention and his family were denied access to him.

12. The source acknowledges that the minor was permitted to continue his studies in prison. However, imprisonment has negatively impacted his education. For example, he was chained and guarded during exams, which has had a serious detrimental impact upon his performance in assessments.

13. The source also reports that, on or around 21 August 2014, the minor was transferred to Minya General Prison, where he was placed in solitary confinement and continued to be subjected to physical and mental abuse. Around this time, and at least five months after his trial, he was informed that he had been found guilty by the court and sentenced to death. This caused him mental distress, which was exacerbated by his placement in solitary confinement without explanation.

14. The source then explains that, on or around 11 November 2014, the minor was transferred to the Minya East High Security Prison where he was once again placed in solitary confinement. He remained in solitary confinement until 24 January 2015, when the

Court of Cassation overturned the lower court's verdict and ordered a retrial of the case, as developed in the following section.

15. The source further claims that during his imprisonment the minor has routinely been denied access to his lawyers and his family. The minor was permitted to meet with a lawyer one time after his arrest, and has not seen his lawyer since. As a result, the minor had no opportunity to discuss or prepare his defence with his lawyer.

16. The source asserts that the minor's health and well-being have also suffered due to his limited contact with his family. Apparently, while his family has made several journeys to visit him, there have been multiple occasions when his family has been denied an opportunity to talk to him. For example, following his beating in August 2014, family members were refused permission to visit him. On four other consecutive occasions, family members were told by prison officials that they had to have a permit from the public prosecutor to visit. In response, the public prosecutor told the family each time that no permit was required, as the minor had already been sentenced. When visits have been permitted, meetings have often been very brief with no designated meeting space. Because the minor has also been denied communication with anyone outside the prison, his family has often been uninformed of his place of imprisonment, forced to make its own enquiries as to his whereabouts and well-being through other families visiting fellow inmates. Since the Court of Cassation overturned the minor's original sentence, his family members have visited him every three weeks. The cost of travelling to and from the prison prohibits them from visiting more frequently.

Trial

17. The source reports that, from 22 to 24 March 2014, the minor's case was heard by the Minya Criminal Court as part of a mass trial alongside 544 other defendants. All defendants were charged with similar offences related to the alleged murder of Colonel Mostafa Ragab al-Atar, the attempted murder of First Lieutenant Kareem Fouad Hendawy, and related offences including damaging public property, seizing weapons, conducting an illegal public gathering and being members of a banned organization. The minor himself was not charged with Colonel al-Atar's murder, but was charged with the attempted murder of First Lieutenant Hendawy.

18. The source explains that proceedings on 22 March 2014 lasted for less than an hour. Only two days later, on 24 March 2014, the judge found 529 of the 545 defendants guilty and sentenced them to death without providing any evidentiary basis for the ruling. The judge acquitted the remaining 16 defendants, again without providing any reasoning for his decision.

19. According to the source, the trial was rife with procedural irregularities and breaches of both domestic and international law. In particular, many defence lawyers were denied access to the courtroom during the trial and those who were able to enter the courtroom were prevented from arguing individual cases. The minor had no opportunity to properly present his defence before the court.

20. In addition, the source reports that the judge also denied to the defence counsels the opportunity to cross-examine the prosecution's sole witness, a police officer. Furthermore, the defence was not permitted to submit witness testimonies in support of the defendants. These witnesses included local police officers and neighbours of the minor's aunt, who would have confirmed that the minor did not participate in the alleged attack on the police station. Defendants were also not afforded the right to testify, nor were questions put to the defendants by the court or the prosecution, thus depriving the defendants and their counsel of any opportunity to contest the charges brought against them.

21. Moreover, the source claims that, on the first day of the trial, the prosecution produced several thousand pages of new material. The submission of such a large body of evidence without the defence having first had an opportunity to consider its contents, should have resulted in the judge granting the defence additional time to examine the new evidence. Yet, the judge denied such a request.

22. The source also specifies that defence lawyers sought to have the judge recuse himself from the case, but these requests were ignored and the judge instead ordered that the defence lawyers be surrounded by armed guards.

23. Reportedly, on 24 March 2014, the judge handed down death sentences to 529 of the 545 defendants, including the minor. Following the consideration of the sentences by the Grand Mufti of Egypt, the next month the judge commuted 492 of the death sentences to life imprisonment, leaving in place 37 of the original death sentences, including that of the minor.

24. The source reports that on 24 January 2015, the Court of Cassation subsequently overturned the convictions of 152 defendants involved in the original hearing (including those of the 37 defendants who remained subject to the death penalty, among them the minor), and ordered a retrial before the Minya Criminal Court. In its judgment, the Court of Cassation specifically noted that the defendants in the original hearing had not been afforded the opportunity to present their defence. The judgment also noted that some defendants, including the minor, had not been correctly treated as minors and thus were not afforded appropriate protections under both domestic and international law.

25. Since the Court of Cassation overturned the lower court's original decision in January 2015, 15 separate hearings in the minor's retrial have taken place: in March, June, July, October and December 2015; in March, April, July, September, November and December 2016; and on 4 January, 11 March, 5 April and 10 May 2017.

26. According to the source, on 7 August 2017, the Minya Criminal Court of Appeal delivered a verdict in the mass trial of about 400 persons, in which the minor was a co-defendant facing the death penalty for offences alleged to have been committed as a minor. Of the defendants, 12 had their death sentences upheld, 228 were acquitted, 157 were sentenced to life in prison and 2 received 10-year prison sentences. Reportedly, the minor was one of the two co-defendants receiving a 10-year sentence, with time served.

Legal analysis of the deprivation of liberty

27. The source submits that the arrest and deprivation of liberty of the minor can be qualified as arbitrary under categories I and III.

Category I

28. The source argues that the failure to produce a warrant for the arrest of the minor, the failure to bring his detention into conformity with the law and the fact that the law is broadly defined constitute the basis for the establishing the minor's arbitrary detention, as there is no legal basis justifying the minor's arrest.

29. Regarding the failure to produce an arrest warrant, the source alleges that the Egyptian authorities failed to present a warrant when arresting the minor despite requests for this document from his family. The Egyptian authorities have failed to produce this document to date. As such, the authorities have failed to comply with article 40 of the Code of Criminal Procedure of Egypt and have failed to show that there were reasonable grounds for the minor's arrest.

30. The source claims that, owing to the failure to respect the procedure established by Egyptian law, there is no legal basis for the minor's arrest, and consequently his detention. His unlawful arrest is aggravated by the State's failure to recognize him as a juvenile and implement the enhanced requirements to protect children who have allegedly infringed the Penal Code from arbitrary arrest.

31. Regarding the failure to bring the minor's detention into conformity with the law, the source notes that authorities have failed to review his detention in line with domestic legislation and article 37 of the Convention on the Rights of the Child, to which Egypt is a party. Reportedly, the relevant legal bases applicable to the minor's pretrial detention are articles 142 and 143 of the Code of Criminal Procedure. According to the source, article 142 of the Code of Criminal Procedure provides that pretrial detention without charge elapses after 15 days, after which the public prosecutor must bring the suspect before a judge to authorize any further detention for a period not exceeding 45 days. Furthermore,

article 143 of the Code provides that, where the accused faces charges that carry a death or life sentence, pretrial detention can be extended for 45-day periods indefinitely upon the authorization of the court hearing the case or the Court of Cassation.

32. Yet, the source claims that the public prosecutor did not bring the minor before a judge to authorize the extension of his pretrial detention upon the elapse of the first 15-day period following his arrest in February 2014, in direct contravention of article 142 of the Code of Criminal Procedure. Moreover, no official request for the minor's continued detention after his arrest has ever been presented to him, his family or his legal counsel, in violation of article 143 of the Code of Criminal Procedure of Egypt.

33. The source notes that the minor was not brought before a judge until nearly two months after his arrest, upon his first appearance before the Minya Criminal Court on 22 March 2014. At this hearing, he was not provided with an opportunity to challenge the legality of his arrest or detention, and the case proceeded to judgment just two days later.

34. In addition, according to the source, the minor's initial conviction was overturned by the Court of Cassation on 24 January 2015, and the first hearing in his retrial did not commence until March 2015. The source notes that though this period exceeded the 15-day legal period, no document extending his detention was issued at this juncture either. While the decision of the Court of Cassation in January 2015 ordered the minor's detention in Minya High Security Prison, no attempts to bring him before the court to allow him to challenge his ongoing detention have been provided to him, in violation of article 143 of the Code of Criminal Procedure.

35. Furthermore, article 9 (3) of the International Covenant on Civil and Political Rights states that detainees should be entitled to "trial within a reasonable time or to release". The relevant period of detention in relation to article 9 (3) is the date of arrest or commencement of detention until the date of final judgment; this therefore includes the period of detention during any appeal or retrial phase.

36. The source asserts that the minor has been incarcerated for over two years since the initial verdict against him was overturned by the Court of Cassation. The source argues that the practice of keeping pretrial detainees incarcerated indefinitely clearly does not comply with the Covenant's article 9 (3) requirement that a trial conclude within a "reasonable time".

37. Finally, the source claims that the law is broadly defined, leading to arbitrary arrest and detention as it incorporates elements of "inappropriateness". The source explains that the mass trials conducted by Egyptian courts have followed charges under Law 10/1914, which ascribes criminal responsibility to any person present at an illegal assembly where an offence is committed. That practice has resulted in the arrest, detention and conviction of thousands of persons, and the handing down of death sentences to hundreds, for a range of offences, without considering individual responsibility for the offence. Such provisions clearly incorporate elements of unpredictability and abrogate due process. They allow anyone allegedly present at the time of an illegal assembly to be charged with serious offences, including murder. This facilitates unjust charging practices whereby collective responsibility is ascribed without the need to investigate individual responsibility for the offence, in clear violation of the due process of law, namely the right to be presumed innocent until proven guilty. The law therefore lacks predictability in its application because any person can be considered an accomplice to an offence by virtue of being in the vicinity of an illegal assembly. The source asserts that Law 10/1914 has been applied arbitrarily to conduct unlawful arrests, resulting in arbitrary deprivation of liberty. It has been used to charge, convict and sentence the minor to death on the basis of joint criminal responsibility, without regard to the due process of law, rendering his deprivation of liberty arbitrary under category I.

Category III

38. The source considers that the failure to recognize the rights of the child in the present case constitutes grounds for establishing arbitrary detention under category III. These failures include: the violation of the prohibition on the death penalty for juveniles; the failure to meet legal thresholds for a death sentence; the violation of the right to be free

from ill-treatment and to be treated with dignity; the violation of the right to a fair trial owing to trial en masse; the violation of the presumption of innocence; the violation of the right to be informed promptly of the charges; the violation of the right to a lawyer in the preparation of one's defence; the violation of the right to a public trial before a competent, impartial court; and the violation of the right to a trial without unreasonable delay.

39. The source claims that at the time of his arrest the minor was 17 years old and therefore a juvenile under domestic and international law. As such, Egypt was obligated to recognize the minor as a juvenile and to comply with the special rules for dealing with juveniles alleged to have infringed the penal law, as stipulated in articles 37 and 40 of the Convention on the Rights of the Child. The failure of the arresting authority and the public prosecutor to recognize the minor as a juvenile in conflict with the law resulted in non-compliance with the applicable international human rights standards, which Egypt is bound to uphold.

40. The source reports that article 111 of the Child Law of Egypt prohibits the imposition of a death sentence or life imprisonment on a minor. The minor's initial death sentence was therefore unlawful under domestic and international law.

41. The source claims that the minor has not been charged with an offence that meets the internationally recognized threshold of "most serious crimes", thus excluding the application of the death penalty. While the death penalty is not prohibited under international law, article 6 of the Covenant requires that retentionist States only apply capital punishment following strict adherence to due process and fair trial guarantees, and for offences that meet the "most serious crimes" threshold.

42. The source argues that the minor is not charged with an offence under Egyptian law that can carry the death penalty. The prosecution's request that the minor receive a death sentence upon retrial therefore runs counter to the duty of Egypt to ensure that capital punishment is only reserved for offences resulting in death.

43. The source reports that the minor has been subjected to egregious prison conditions and severe violations of due process. This constitutes a violation of the prohibition against ill-treatment and of the right to be treated with dignity. In particular, the source considers that the following facts constitute such a violation: (a) being beaten by prison guards; (b) being forced to share a small and severely overcrowded prison cell; (c) being placed in solitary confinement while imprisoned by State authorities; (d) being forced to submit to unsanitary prison conditions, which provoked severe health problems that led to the minor's hospitalization; and (e) being granted only limited access to family, thereby depriving the minor of family support. In addition, the source reports that until his eighteenth birthday, the minor was held in the Minya Transfer Prison, which is not a juvenile detention facility. During this period, he was detained in a cell with other individuals, and the source claims that some of them were adults. The source notes that the Minya Transfer Prison is not designated by the Egyptian Government as a place of detention for juveniles. This placed the minor at risk of ill-treatment and violated his rights under article 37 (c) of the Convention on the Rights of the Child. Moreover, the authorities' failure to use pretrial detention as a last resort and their detention of the minor without affording him recourse to challenge the legality of his arrest and detention amounts to the clear use of detention as a form of punishment.

44. The source claims that the minor's right to a fair trial was violated. In particular, the source claims that the prosecution's continued failure to sever or amend the indictment to recognize that the minor was a juvenile and rescind the request for the application of the death penalty reflects the arbitrary application of the law in order to secure convictions without due regard for fairness. In addition, in arresting and detaining the minor without a warrant and failing to bring his detention under any legal framework, the authorities have acted under the assumption that he is guilty of the alleged offences, violating the presumption of innocence. In particular, the Egyptian authorities' continued inappropriate pretrial detention of the minor indicates the Government's belief that his guilt has been predetermined. The minor's lengthy pretrial detention without judicial oversight amounts to a clear use of pretrial detention as punishment, running counter to the presumption of innocence.

45. Furthermore, the source recalls that the minor's first meeting with his legal representative occurred two months after his arrest, at his first appearance before the Minya Criminal Court on 22 March 2014. The authorities therefore did not provide the minor with the appropriate conditions for him to confer with a lawyer that would have enabled the preparation of a substantive defence.

46. The source also argues that the failure of the prosecution to provide the minor's lawyers with disclosure of the case against him prevented him from preparing an appropriate defence on his behalf or challenging the prosecution's evidence against him. In turn, the prosecution acted in violation of the principle of equality of arms, prejudicing the minor's ability to mount a meaningful defence. Moreover, the Court failed to uphold the minor's right to effective participation in the proceedings against him. This right includes ensuring the minor comprehends the charges and possible consequences and penalties in order to direct his legal representative when challenging witnesses, providing an account of events and in making appropriate decisions, inter alia, about evidence and testimony.

47. Therefore, the source claims that by acting in violation of the minor's right to legal counsel, the Court failed to provide him with the opportunity to direct his lawyer appropriately in the preparation of his defence and to comprehend the nature of the proceedings against him. Further, neither the minor nor his lawyers were permitted time to address the court, nor was he called to give testimony, in clear contravention of his right to participate in the trial.

48. Therefore, according to the source, the Egyptian authorities have severely constrained the minor's right to adequate time and appropriate facilities to prepare his defence, in contravention of his fair trial rights enshrined in article 40 of the Convention on the Rights of the Child and article 14 of the International Covenant on Civil and Political Rights.

49. Moreover, the source claims that the Minya Criminal Court was not competent or impartial: the Court's failure to uphold the minor's right to full equality of arms in the proceedings against him, while providing the prosecution with full procedural rights in presenting its case, shows bias in favour of the State. This bias is further supported by the Court's decision to issue a judgment in a mass trial of 545 defendants after just two hearings, as it cannot be objectively reasoned that the minor's individual criminal responsibility for the crimes he has allegedly committed was given due regard. Furthermore, the Minya Criminal Court was not competent to hear the minor's case. According to the source, the Child Law establishes a separate justice system for minors. The source also claims that the trial was not public, therefore resulting in a breach of the law. Indeed, the Court tried the minor in closed hearings with the intention of obscuring the transparency of the proceedings, rather than protecting his right to privacy. The minor's family were barred from attending the hearings in the case. The minor himself has been prevented from attending certain proceedings, including the second session of the initial trial when his sentence was handed down (to which the minor's lawyer was also denied access). The minor did not learn of the outcome of this second hearing until five months after it took place.

50. Finally, the source claims that the procedural delay of over two years is in violation of the minor's right to trial without undue delay, enshrined in article 14 (3) (c) of the Covenant.

Response from the Government

51. On 16 January 2018, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information by 18 March 2018 concerning the current situation of the minor and any comment on the source's allegations. On 8 March 2018, the Government sought an extension of the deadline to submit its response. In conformity with paragraph 16 of its methods of work, the Working Group granted an extension for the Government to submit its response by 2 April 2018. The Government submitted its response to the regular communication on 27 March 2018.

52. In its response, the Government affirms, firstly, that the Egyptian legal system affords sufficient safeguards to those deprived of their liberty, in conformity with international standards, including articles 9 and 10 of the International Covenant on Civil and Political Rights and articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. Torture by officials is also liable to punishment under the Penal Code and the health rights of persons deprived of their liberty are protected.

53. According to the Government, the minor was arrested and interrogated by the public prosecutor in case No. 8473 of 2012, Mattay (reference No. 1842 of 2013 North Minya). The public prosecutor initiated the accusations against the minor and others by order of referral No. 115 on 14 August 2013 in Mattay Directorate, Minya Province. The co-defendants were accused of gathering with the purpose of committing crimes against persons and properties; intimidating victims; murder; attempted murder; the use of force and violence against public officials; destruction of State-owned buildings; damaging public assets (Mattay Police Station and police cars); disruption of work at a public office (Mattay Police Station); setting Mattay Police Station on fire; deliberate destruction of original files and records of State documents at Mattay Police Station; assisting the escape of 12 arrested persons; possession of machine guns and ammunition; and the possession of other weapons, such as sticks, batons, stones and Molotov cocktails.

54. On 9 April 2014, the case was referred to the criminal court, which ordered the continued detention of the accused and the issue of arrest and detention orders against the fugitives tried in absentia. According to the public prosecutor, the minor was arrested on 28 April 2014 and was detained until 23 August 2014 in a legally allocated place at the Mattay Police Station in accordance with the court referral order.

55. On 7 August 2017, the court sentenced the minor to a 10-year prison term and ordered the transfer of the weapons seized to the Ministry of the Interior, the confiscation of weapons and ammunition possessed by any of the accused persons and the payment of a fine equal to the value of the damaged properties.

56. On 27 August 2017, the minor decided to challenge the verdict under reference No. 1177. Case No. 10675 was referred to the Court of Cassation on 28 October 2017.

57. The Government states that the minor was already 18 and not 17 years old at the time of his imprisonment as an adult.

58. The Government also states that the minor received a medical examination in prison that showed no specific illnesses. It also claims to possess the visitation record for the minor from the beginning of his detention, which shows that he received his last visit on 28 February 2018. Since the minor had submitted no complaint to the competent authorities, the source's allegations are invalid and lack factual or legal evidence.

Further comments from the source

59. The response from the Government was transmitted to the source for its further comments on 27 March 2018. In its response of 12 April 2018, the source submits that the Government has not responded to the substance of the allegations of the minor's arbitrary arrest, detention and trial. In particular, the Government has failed to address the procedural history of his mass trial and initial death sentence delivered while he was a juvenile and has made factually inaccurate representations.

60. The source submits that the minor was arrested on 2 February 2014 when he was 17 years and 5 months old, and refers to the complete absence in the Government's submission of any mention of the mass trial of more than 500 individuals, including the minor, in March 2014 and of the death sentences issued for 37 of the co-defendants, including the minor, delivered on 24 March 2014 (the written judgment was issued on 28 April 2014) when he was 17 years and 9 months old. The accused was a minor at the time of his alleged crime in August 2013 and also at the time of his arrest and initial sentencing. The Government's claim that the minor was arrested on 28 April 2014 is erroneous as he had been in custody for more than two months by that time and had already been sentenced to death. Nor does the Government acknowledge the Court of Cassation's judgment overturning the minor's death sentence, along with a number of others, from the minor's

initial mass trial, which cited, among other things, the minor's age as one of the grounds for the reversal. The 10-year sentence against the minor, referred to by the Government, was actually from his retrial and is currently the subject of a second appeal before the Court of Cassation.

61. In addition, according to the source, the Government has not addressed the violations of the minor's rights: to a fair trial, owing to the mass trial; to be informed promptly of the charges and to be tried without delay; to a lawyer for the preparation of his defence; to a public trial before a competent, impartial court; and to a trial without unreasonable delay.

62. The source further emphasizes that the Government has not provided details about the legality of the minor's detention and whether the Government will investigate his allegation of ill-treatment in prison in accordance with its obligations under the international and domestic laws that it cites.

Discussion

63. The Working Group thanks the source and the Government for their extensive engagement and for their submissions in relation to the minor's detention.

64. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

65. The Working Group recalls that where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[1]

66. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.[2] Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group must assess whether such detention is also consistent with the relevant provisions of international human rights law.[3] The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[4]

Category I

67. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I, which concerns deprivation of liberty without invoking any legal basis.

68. While the Government states that the minor was arrested in accordance with the law and due process, and that its laws provide for the legal guarantees and judicial supervision

[1] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, at pp. 660–661, para. 55; and opinions Nos. 41/2013, para. 27, and 59/2016, para. 61.

[2] See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9.

[3] See opinions Nos. 94/2017, para. 47; 76/2017, para. 49; 1/2003, para. 17; 5/1999, para. 15; and 1/1998, para. 13.

[4] See opinions Nos. 94/2017, para. 48; 88/2017, para. 24; 83/2017, para. 60; 76/2017, para. 50; and 33/2015, para. 80.

in accordance with international standards, it has been unable to provide the Working Group with the correct date of his arrest, initial trial and death sentence and appeal. This wholesale omission of key information raises doubts about the purported documentary evidence presented by the Government. In any case, the Government has not provided a copy of the arrest warrant for the minor's arrest. According to the information provided by the source, which the Government has failed to rebut with credible evidence, the minor was arrested not on the alleged "crime scene", in flagrante delicto, but nearly six months after the event of 14 August 2013, without the presentation of a warrant. In principle, arrest without a valid warrant must be considered ipso facto a violation of articles 3 and 9 of the Universal Declaration of Human Rights, articles 9 (1) of the International Covenant on Civil and Political Rights and article 37 (b) of the Convention on the Rights of the Child for want of a legal basis.

69. The alleged legal basis for the minor's arrest and detention further suffers from other serious defects. As stated in paragraph 12 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law. In order to ascertain such a legal basis, the authorities should have informed the minor of the reasons for his arrest or charges against him at the time of his arrest, but this did not happen until the following day, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant.

70. Furthermore, the minor was not brought promptly before a judge or afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of his detention in accordance with article 9 (3) and (4) of the Covenant and article 37 (d) of the Convention on the Rights of the Child. This also deprived him of an effective judicial remedy for the violation of his rights and freedoms, as provided in articles 8 and 10 of the Universal Declaration of Human Rights and articles 2 (3) and 14 (1) of the Covenant.

71. The Working Group also expresses its grave concern at the minor's incommunicado detention and denial of access to a lawyer. The Working Group, in its jurisprudence, has consistently argued that holding a person incommunicado breaches the right to challenge the lawfulness of detention before a judge.[5] Articles 8, 10 and 11 of the Universal Declaration of Human Rights, articles 2 (3), 9 and 14 of the Covenant and article 37 (c) and (d) of the Convention on the Rights of the Child also confirm the impermissibility of incommunicado detention.

72. Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see A/54/44, para. 182 (a)). The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also consistently urged States to declare incommunicado detention illegal (see A/54/426, annex, para. 42; and A/HRC/13/39/Add.5, para. 156). The beatings and denial of medical care endured by the minor appear to confirm the serious concerns about incommunicado detention. An arrestee or detainee that is beaten and sick, in violation of articles 5 and 25 (1) of the Universal Declaration of Human Rights, articles 7 and 10 of the International Covenant on Civil and Political Rights and article 37 (c) of the Convention on the Rights of the Child, will find it difficult to take proper judicial proceedings to challenge the lawfulness of detention.

73. The Working Group therefore considers that the minor's arrest, detention and imprisonment lack a legal basis and are thus arbitrary, falling under category I.

[5] See opinion No. 93/2017, para. 49.

Category III

74. The Working Group will now consider whether the violations of the right to a fair trial and due process suffered by the minor were of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

75. While the reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case and other relevant elements, the Working Group considers that the excessive delay from the time of arrest to the end of trial is in violation of article 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (3) (c) of the International Covenant on Civil and Political Rights, and that the burden lies with the Government to prove its legitimacy, necessity and proportionality. In this instance, the minor has been held in custody since his initial arrest on 2 February 2014. The Government failed to provide any justification for the minor's continued pretrial detention even though the Court of Cassation quashed his initial conviction and death sentence on 24 January 2015 and the trial court did not deliver its 10-year sentence against the minor until 7 August 2017. In this regard, the Working Group finds that the Government neither tried the minor within a reasonable time nor released him, in violation of article 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (3) (c) of the Covenant. Such a delay also breached the minor's right to appeal, in violation of the article 14 (5) of the Covenant.

76. Furthermore, the Government did not respect the minor's right to legal assistance at all times — which is inherent in the right to liberty and security of person — and his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3 and 9 of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the International Covenant on Civil and Political Rights and articles 37 (d) and 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child. According to the source, the minor's first meeting with his legal representative occurred two months after his arrest, at his first appearance before the Minya Criminal Court on 22 March 2014, two days before he was convicted and sentenced to death; the Government therefore did not provide him with the appropriate conditions for him to confer with a lawyer that would have enabled the preparation of a substantive defence. The Government recited the provisions of the Constitution but provided no substantial rebuttals to the source's specific claims.

77. The Working Group also has serious doubts about the fairness of a trial for more than 500 defendants, where the judgment was delivered in just two days after proceedings that lasted less than an hour. The death sentences imposed on more than 500 defendants and the lack of individual sentences fall short of the requirements for a fair trial and are arbitrary in themselves. Then, although the minor's conviction and death sentence were overturned by the Court of Cassation, he was again convicted and sentenced to 10-year prison term in yet another mass trial of almost 400 defendants.[6] The Working Group therefore concludes that his right to a fair trial has been repeatedly violated.

78. Specifically, the Working Group considers that the imposition of the death penalty following a flawed procedure is in violation of article 6 (2) of the International Covenant on Civil and Political Rights, which provides that the imposition of the death penalty should not be contrary to other provisions of the Covenant.[7]

79. The Working Group further finds the death sentence imposed on a minor at the time of the commission of an alleged crime is in violation of both customary international law and the domestic law of Egypt. Article 6 (5) of the Covenant states unequivocally that the death sentence "shall not be imposed for crimes committed by persons below eighteen years of age". Article 37 (a) of the Convention on the Rights of the Child also clearly prohibits capital punishment for persons below eighteen years of age. Indeed, the imposition of a death sentence for the act of a legal minor is a violation of the fundamental right to life stipulated in article 3 of the Universal Declaration of Human Rights as well.

[6] See opinion No. 41/2016, para. 27.

[7] See opinion No. 32/2017, para. 18.

80. The Working Group notes that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment specifically found that "international law does not attribute a different value to the right to life of different groups of human beings, such as juveniles … or persons sentenced after an unfair trial, but considers the imposition and enforcement of the death penalty in such cases as … in violation of article 7 of the Covenant and articles 1 and 16 of the Convention against Torture" (A/67/279, para. 58).

81. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the minor's deprivation of liberty an arbitrary character, falling under category III.

82. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

83. The Working Group notes that the present opinion is only one of many other opinions in the past five years in which the Working Group finds the Government of Egypt to be in violation of its international human rights obligations.[8] The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

Disposition

84. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of the minor, being in contravention of articles 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 25 of the Universal Declaration of Human Rights, of articles 2, 6, 7, 9, 10, 12 and 14 of the International Covenant on Civil and Political Rights and of articles 24, 37 and 40 of the Convention on the Rights of the Child, is arbitrary and falls within categories I and III.

85. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of the minor without delay and to bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

86. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the minor immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

87. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the minor and to take appropriate measures against those responsible for the violation of his rights.

88. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

[8] See, for example, opinions Nos. 83/2017, 78/2017, 30/2017, 60/2016, 54/2016, 42/2016, 41/2016, 7/2016 and 6/2016. *The Working Group expresses its particular concern* at the spate of grave human rights violations, including arbitrary detention, following the 2013 coup d'état.

Follow-up procedure

89. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether the minor has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to the minor;

(c) Whether an investigation has been conducted into the violation of the minor's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

90. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

91. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

92. The Government should disseminate through all available means the present opinion among all stakeholders.

93. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[9]

[*Adopted on 24 April 2018*]

[9] See Human Rights Council resolution 33/30, paras. 3 and 7.